

REMARKS

This responds to the Final Office Action mailed on June 6, 2007. Applicants thank the Examiner for his careful review of this application. Claims 1-15 and 37-42 have been rejected. Claims 1-15 have been canceled. Applicants respectfully request reconsideration of the application in view of the following remarks submitted in support thereof, which is rendered in appeal brief format.

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1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee, SUREHARVEST, INC., as evidenced by the assignment from inventors Jeffrey W. Dlott, Harry W. Rosenberg, Clifford P. Ohmart, and Rebecca Connolly recorded November 2, 2000 at Reel 011263, Frame 0089.

2. RELATED APPEALS AND INTERFERENCES

Appeal number 2007-2455 of application number 09/705,373, which was decided on July 12, 2007, may have a bearing on the Board's decision in the present appeal.

3. STATUS OF THE CLAIMS

The present application was filed on November 2, 2000 with claims 1-36. Applicants withdrew claims 16-36 in response to the Restriction Requirement mailed December 14, 2003. A non-final office action was mailed on March 15, 2004. A final office action was mailed on December 23, 2004. Another final office action was mailed on February 28, 2006. A non-final office action was mailed on November 15, 2006. A final office action was mailed on June 6, 2007.

4. STATUS OF AMENDMENTS

No amendments have been made subsequent to the final office action mailed June 6, 2007.

5. SUMMARY OF CLAIMED SUBJECT MATTER

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

§103 Rejection of the Claims

Claims 37-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,478,990 to Montanari et al. (hereinafter "Montanari") in view of U.S. Patent No.

6,119,531 to Wendte et al. (hereinafter “Wendte”) and U.S. Patent No. 5,285,383 to Lindsey et al. (hereinafter “Lindsey”) with official notice.

7. ARGUMENT

Claims 37-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,478,990 to Montanari et al. (hereinafter “Montanari”) in view of U.S. Patent No. 6,119,531 to Wendte et al. (hereinafter “Wendte”) and U.S. Patent No. 5,285,383 to Lindsey et al. (hereinafter “Lindsey”) with official notice. As will be fully explained below, the combination of Montanari in view of Wendte and Lindsey does not raise a *prima facie* case of obviousness against any of independent claims 37 and 42.

In support of the 35 U.S.C. § 103(a) rejections, the Final Office Action asserts that Montanari discloses “comparing the agricultural product data against a compliance requirement,” as recited in independent claims 37 and 42. Applicants disagree with the Final Office Action’s characterization of Montanari relative to independent claims 37 and 42 because the portion of Montanari relied upon by the Final Office Action (col. 1, lines 46-61) does not disclose “comparing the agricultural product data against a compliance requirement,” as recited in independent claims 37 and 42.

At column 1, lines 46-61, Montanari discloses:

With the rise of free markets and the awareness of a global economy, a system is required that can identify food products that cross international boundaries. Health and safety regulations with respect to food products differ in various countries and a system is required that can verify the source and origin of products to ensure compliance with such varied regulations. Attitudinal barriers also exist in various countries that prevent the establishment of a true free market. For example, some Japanese have shown a preference for Australian beef as opposed to U.S. beef based upon a belief that the hygienic practices used in Australia are better than those used in the U.S. A system is required that enables the tracing back of process steps so that such concerns are addressed.

This portion of Montanari merely discloses “a system is required that can identify food products that cross international boundaries” that “can verify the source and origin of products to ensure compliance with such varied regulations” and “enables the tracking back of process steps so that such concerns are addressed” (col. 1, lines 46-61). Here, Montanari merely provides a

general summary of the system and does not disclose any details on how the system can identify and verify food products. The paragraph located at column 1, lines 46-61 does not disclose any comparison of agricultural product data. As Montanari merely discloses a general summary of a system without disclosing any details on how the system functions, Montanari cannot reasonably be considered to place the public in possession of the “comparing the agricultural product data against a compliance requirement,” as recited in independent claims 37 and 42.

To establish a *prima facie* case of obviousness, the prior art references must disclose or suggest all the claim features. Here, in view of the incorrect characterization of Montanari, the references as combined do not disclose all the features of the claimed invention. Accordingly, the Applicants submit that independent claims 37 and 42 are patentable under 35 U.S.C. §103(a) over Montanari in view of Wendte and Lindsey. Claims 38-41, each of which depends from independent claim 37 or 42, are likewise patentable under 35 U.S.C. §103(a) over Montanari in view of Wendte and Lindsey for at least the same reasons set forth above regarding independent claims 37 and 42. Accordingly, the obviousness rejections of pending claims 37-42 are improper and should be withdrawn.

8. SUMMARY

For the reasons argued above, claims 37-42 were not properly rejected under §103(a) as being unpatentable over Montanari in view of Wendte and Lindsey. It is respectfully submitted that the references cited do not render the claims obvious and that the claims are patentable over the cited references. Reversal of the rejection and allowance of the pending claims are respectfully requested.

Reservation of Rights

In the interest of clarity and brevity, Applicants may not have addressed every assertion made in the Final Office Action. Applicants silence regarding any such assertion does not constitute any admission or acquiescence. Applicants reserve all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicants timely object to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserve all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

Respectfully submitted,

JEFF DLOTT ET AL.

By their Representatives,

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Date 8/29/2007

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CERTIFICATE UNDER 37 CFR § 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 29, day of August 2007.

Name: Dawn R. Shaw Signature: /Dawn R. Shaw/